

EX-104-104-104-104

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

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**MAY - 8 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters ("NAB")<sup>1</sup> submits these brief Reply Comments to the *Notice of Proposed Rule Making* ("Notice")<sup>2</sup> in the above-captioned proceeding.<sup>3</sup> NAB is concerned that the definition of "telecommunications" contained in the Telecommunications Act of 1996 ("1996 Act")<sup>4</sup> may be read broadly enough to encompass some information services providers, such as broadcasters, whose primary purpose is to transmit only the information they generate. NAB, therefore, urges the Commission to exclude such providers from forced contributions to the universal service fund.

As noted by the Commission,<sup>5</sup> the 1996 Act requires every provider of telecommunications services to contribute to the fund. Interstate telecommunications carriers

<sup>1</sup> NAB is a nonprofit, incorporated trade association which serves and represents America's radio and television stations and networks.

<sup>2</sup> *Notice of Proposed Rule Making and Order Establishing Joint Board*, FCC 96-93, adopted and released March 8, 1996.

<sup>3</sup> The Commission had extended its original reply comment date to May 7, 1996, and on May 6 denied a motion for an additional extension. However, the reply comment deadline was extended to May 8, pursuant to Section 1.46 of the Commission's Rules. *Order*, DA 96-702, adopted and released May 6, 1996.

<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 56.

<sup>5</sup> *Notice*, ¶ 118.

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*must* contribute to the fund, and the Commission may require other providers of interstate telecommunications to contribute if the public interest requires.

Unfortunately, Congress has provided a very ambiguous definition of “telecommunications” “the transmission, between or among points specified by the user, of the information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>6</sup> There is no requirement that the user be an entity separate from the telecommunications carrier

This omission could create problems for broadcasters and others. For example, many radio and television broadcasters may use their subcarriers and vertical blanking intervals (“VBI”) to provide to the public, for a fee, background music and other services that are not regulated under Title II. With the advent of digital transmission systems, coupled with the flexible use provision of the 1996 Act,<sup>7</sup> broadcasters in the future could provide one or more additional broadcast services, some of which may involve a fee, in addition to more traditional free services. Such activities seemingly could fit the definition of “telecommunications services”: the offering of telecommunications for a fee directly to the public.<sup>8</sup> If those activities are deemed to be “telecommunications,” then a broadcaster transmitting them could be construed as a “telecommunications carrier,” i.e., any provider of telecommunications services.<sup>9</sup>

Such a reading would place on broadcasters certain obligations that Congress and the Commission have consistently rejected. For example, a telecommunications carrier “shall be treated as a common carrier under this Act only to the extent that it is engaged in providing

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<sup>6</sup> 1996 Act, § 3(a)(2)(48).

<sup>7</sup> 1996 Act, § 201.

<sup>8</sup> 1996 Act, § 3(a)(2)(51).

<sup>9</sup> 1996 Act, § 3(a)(2)(49).

telecommunications services.<sup>10</sup> Telecommunications carriers also have the general duty to provide interconnection with other telecommunications carriers and to develop networks that meet certain standards.<sup>11</sup> Such treatment for broadcasters runs totally counter to the Communications Act (“the Act”) and Commission precedent. Section 3(h) of the Act<sup>12</sup> specifically states “a person engaged in radio broadcasting shall not, insofar as that person is engaged, be deemed a common carrier.” The Commission’s rules apply common carrier regulation only to subcarrier and VBI services that are common carrier in nature.<sup>13</sup> Other such services — even those provided for a fee — have never been regulated as common carrier services. Logic and fairness dictate that the Commission refrain from treating such services as “telecommunications services” under the 1996 Act

Some commenters have urged the Commission to apply the universal service requirement to a broad range of telecommunications services.<sup>14</sup> However, NAB believes that non-Title II services provided by broadcasters, even for a fee, are more akin to the 1996 Act’s definition of “information services,” which are not subject to universal service contributions. A telecommunications service provider must offer telecommunications, i.e., “information of the *user*’s choosing, without change in the form or content of the information as sent and received.” (Emphasis added.) The role of a telecommunications service provider is passive. On the other hand, the information services definition — “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, or making available information”<sup>15</sup> — is very

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<sup>10</sup> *Id.*

<sup>11</sup> 1996 Act, § 101.

<sup>12</sup> 47 U.S.C. § 153(h).

<sup>13</sup> See 47 C.F.R. §§ 127(b), 295(b), 667(b).

<sup>14</sup> See, e.g., Comments of LDDS WorldCom.

<sup>15</sup> 1996 Act, §3(a)(2)(41).


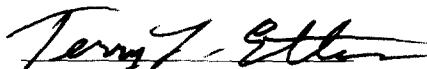
proactive. The information services provider may be involved in a host of activities directly related to the form and content of the information. Similarly, a broadcaster transmitting a music or information service on its subcarrier or VBI decides what kind of service to offer, selects the format that will be offered, and actively makes the service available to subscribers. The broadcaster is actively involved in the form and content of the information that is sent.

From the above, it is obvious that services not offered by a broadcaster on a common carrier basis, but for which the broadcaster may charge a fee, bear no relationship to the kind of "telecommunications" envisioned by Congress. NAB urges the Commission to recognize that such services are not "telecommunications" as defined in the 1996 Act.

Respectfully submitted,

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May 8, 1996

**CERTIFICATE OF SERVICE**

I, Angela L. Barber, do hereby certify that a true and correct copy of the foregoing  
Reply Comments of the National Association of Broadcasters was sent this 8th day of  
May, 1996 via First Class mail, postage prepaid, to:

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